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# Memorandum

**330.3172**

**To :** Mr. Douglas Peter  
Audit Review & Refunds (MIC: 39)

**Date:** March 2, 1994

**From :** Rachel M. Aragon  
Staff Counsel

**Subject:** P--- and J--- G---  
SR -- XX-XXXXXX

This is in response to your memorandum dated January 5, 1994. The taxpayer is in the business of leasing new and used wedding garments which it alters for the lessee. The taxpayer wants to know if alterations to new garments are taxed differently than alterations to used garments.

The question raises two separate analyses. One involves repairs and the other involves leases. We will discuss how they relate to these types of transactions.

Revenue and Taxation Code section 6006(b) defines "sale" to include the producing, fabricating or processing of tangible personal property for a consideration for consumers. Regulation 1524(b)(1) explains that charges for alterations to new clothing are subject to tax whether the charges are separately stated or included in the price of the garment. It is also immaterial whether the person performing the alterations is the seller of the garment or not. On the other hand, alterations to used clothing are generally not regarded as taxable sales. (See, generally, Reg. 1546.) However, this analysis applies only when one person makes the alterations or repairs to property owned by another person. In other words, when the property owner makes repairs or alterations to its own property, this is not fabrication and it is not a taxable sale.

Revenue and Taxation Code sections 6006(g), 6006.1, 6010(e), 6010.1, and Regulation 1660(c)(1) are the provisions that apply to the type of transactions this lessor is making. These provisions explain that certain leases of tangible personal property are continuing sales and purchases and are subject to use tax measured by the rentals payable. The rentals subject to the use tax include any payments required by the lease. For instance, when the lessee leases a garment, the lessee wants a garment that fits. If the lessor makes an additional charge for alterations in order to provide a garment that fits, that alteration charge is a payment which is required for the lease of a fitted garment. Thus, that charge is part of the taxable rentals payable.

A lessor leasing tangible personal property in substantially the same form as acquired may elect to pay California tax measured by its purchase price. A lease of such California tax-paid property is not a taxable continuing sale. The lessor may make that election by paying California sales tax reimbursement or use tax on its purchase price. The lessor can either pay the tax or tax reimbursement to its vendor when purchasing the property or by paying use tax directly to the Board with its timely return for the reporting period in which the property is first placed into rental service. When a lessor makes an election to pay tax on the purchase price, it is making an election to be treated as the consumer of the property rather than the reseller to the lessee. (Reg. 1660(c)(2)&(3).)

We note that Annotation 330.4180 explains that minor temporary adjustments are not regarded as substantially changing the form of the garment. We assume the alterations the taxpayer is making to the garments are covered by this annotation. Thus, we regard the garments as being leased in substantially the same form as acquired and the taxpayer may elect to pay tax on the purchase price.

If the taxpayer made a timely election to pay tax on the purchase price of the garments, neither the rentals nor the alterations (regardless of whether the garments are new or used) are subject to tax. However, as the consumer, the taxpayer is liable for any materials purchased for use in altering the garments. On the other hand, if the taxpayer did not elect to pay tax on its purchase price, the leases are treated as continuing sales and purchases and the taxpayer must collect tax on the rentals payable which includes any charges for alterations or repairs irrespective of whether the garments are new or used.

If we can be of further assistance, please feel free to write again.

RMA:ljt

cc: --- --- - District Administrator (--)